

SBGCo **Connect** – March 2023

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HAPPY
HOLI





Greetings to all our readers and Happy Holi! We wish that we find you in good health & spirits.

The month of March brings together with it various financial year-end activities under GST namely,

- a. Filing of Letter of Undertaking for the next financial year before 31st March
- b. Opting in/ out of composition scheme in Form CMP-02 by 31st March
- c. Annual working for Rule 42/43 reversal to avoid interest liability on subsequent determination of short reversal during the year in GSTR 3B of March
- d. Comparison of tax liabilities declared in GSTR 1 and paid in GSTR 3B during FY 2022-23 so that differences if any, can be corrected in the present FY itself.

Specifically for Goods transport agencies, the GSTN portal has enabled a functionality to file declaration in Annexure-V to opt for payment of tax under Forward Charge. The functionality can be accessed at: Dashboard → Services → User Services → Opting Forward Charge payment by GTA (Annexure V) → Select FY & apply declaration.

ITC table of Form GSTR 3B has gone through a slew of changes in the last few months with the recent change being presentation of credit notes uploaded by vendors in Form GSTR 2B of the recipient. Consequent to the above change, it could so happen that value of credit notes could be higher than value of tax invoices and hence, Table 4A(5) of Form GSTR 3B has been modified so as to accept negative values as well. Likewise, negative values in Table 4D(2) of Form GSTR 3B too shall be accepted by the GSTN portal. Details GST portal advisory regarding the same can be accessed by clicking [here](#).

The functionality for geocoding the principal place of business address (i.e., the process of converting an address or description of a location into geographic coordinates) is now available on the GST Portal. The system-generated geocoded address will be displayed under “My profile → Place of Business tab”, and taxpayers can either accept it or update it to the correct location. The said functionality is currently made available for taxpayers registered in Delhi and Haryana only, with other states to follow soon.

Through this month’s newsletter, we bring to you a summary of recent developments in GST, divided into following sections:

- A. [What’s New?](#)
- B. [Recent decisions from the Judiciary](#)
- C. [Recent Advance Rulings and analysis of the same](#)
- D. [GST Compliance Chart for the month of March 2023](#)

All the 19 sessions of the GST Back-to-Basics series are available on our YouTube Channel, which can be accessed by clicking [here](#).

We look forward to hearing from you for any feedback or suggestion.

Team SBGCo



A. What's New?

I. Notifications issued

A. Exemption rationalization in relation to conduct of entrance examination

- Explanation has been added in the exemption NN 12/2017 - CT (R) dated 28.06.2017, clarifying that any authority, board or body set up by the CG or SG including National Testing Agency for conduct of entrance examination for admission to educational institution shall be treated as 'educational institution' only for the limited purpose for conduct of such entrance examination.

In accordance with the above change, the exemption available to educational institution for conduct of entrance examination shall now also be available to any authority, board or body set up by the CG or SG including National Testing Agency.

Notification No. 01/2023 - Central Tax (Rate) dated 28.02.2023 effective from 01.03.2023

B. RCM related changes

- The explanation (h) in the Notification for RCM applicability has been amended to include "Courts and Tribunals" in the scope for all provisions which refer to CG and SG.
- Thus, RCM provisions shall be applicable for services from Courts and Tribunals as well as applicable on services from CG and SG subject to further amendment to Entry No. 2 in Schedule III (Activities or transactions to be treated as neither supply of goods nor services) dealing with services of Courts and Tribunals

Notification No. 02 / 2023 - Central Tax (Rate) dated 28.02.2023 effective from 01.03.2023

C. Changes in GST Rates for Goods

Old Entry	New Entry	GST Rate
91A. Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, pre-packaged and labelled	91A. Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery, pre-packaged and labelled; Khandsari Sugar, pre-packaged and labelled; <u>Rab, pre-packaged and labelled</u>	5%

Likewise, Rab, other than pre-packaged and labelled is now exempted vide entry 94 in exemption notification for goods (NN 02/2017 - Central Tax (Rate) dated 28.06.2017)

Entry	Old Rate	New Rate
Pencil sharpeners	18%	12%

Notification No. 03/2023 - Central Tax (Rate) & 04/2023 - Central Tax (Rate), both dated 28.02.2023 effective from 01.03.2023



II. Circulars issued

A. Clarification regarding GST rates and classifications of goods.

- Classification of 'Rab' (massecuite prepared by concentrating sugarcane juice on open pan furnaces) = HSN code 1702 attracting GST rate of 18%
- Correct six-digit HSN code for "Carbonated Beverages of Fruit Drink" or "Carbonated Beverages with Fruit Juice" has been clarified as HSN 2202 99 with GST rate of 28% and compensation cess of 12%
- Snack pellets (such as 'fryums') which are manufactured through the process of extrusion, are classifiable under HSN 1905 90 30 (Extruded or expanded products, savoury or salted) with GST rate of 18%
- It has been clarified that Compensation Cess at the rate of 22% is applicable for those motor vehicle falling under the HSN code 8703 which satisfy all 4 conditions as under:
 - a. Popularly known as "SUV (Sports Utility Vehicles)"
 - b. engine capacity exceeds 1,500 cc
 - c. length of the vehicle exceeds 4000 cc
 - d. Ground clearance is 170 mm and above
- IGST rate for certain goods had been raised from 5% to 12% if the same are imported for the specified purpose (like Petroleum operations/Coal bed methane operations) vide 47th GST Council Meeting. However, it has come to the notice of the government that some of the said goods are already part of schedule I being eligible 5% tax. Hence, it has been clarified that in such cases, the importer can claim benefit of lower rate of 5%.

Circular No. 189/01/2023-GST dated 13.01.2023

B. Clarification regarding GST rates and classifications of services

- Accommodation services by Army Mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity would be treated as exempt services being covered by Entry No. 6 of Notification No. 12 / 2017 - C T (Rate) dated 28.06.2017.
- Incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy (and not consideration) and thus not taxable in view of the provisions of section 2(31) and section 15 of the CGST Act, 2017.

Circular No. 190/02/2023-GST dated 13.01.2023

SBGCO Comments

Such circulars are always welcome by the taxpayer and department as it brings clarity regarding latest provisions and clears any ambiguity that may have arose on account of recent amendments / rate changes.



B. Recent Decision from the Judiciary:

1. Premier Sales Promotion Private Ltd vs. Union of India [2023-VIL-67-KAR]

Background facts:

The petitioner had submitted an application before the Karnataka AAR regarding taxability of 'vouchers / pre-paid instruments (PPI).' The AAR had ruled that such act of issuing vouchers is a supply of taxable goods. The Appellate AAR also upheld the said ruling in the case of the petitioner.

As per the petitioner, the vouchers issued in the present case are semi-closed PPI in which goods or services to be redeemed are not identified at the time of issuance. The vouchers are given to employees or customers but the same cannot be redeemed for cash at any point. The vouchers are issued only with the prior approval of RBI.

Issue Raised:

The Appellant being aggrieved by the ruling of AAR and AAAR regarding taxability of vouchers / PPI, has preferred the present writ petition.

Gist of the Decision:

The Hon'ble HC took note of the above facts and held that the issuance of vouchers is similar to pre-deposit and not supply of goods or service because the value printed on the on the form can be transacted only at the time of redemption and not at the time of delivery of the said vouchers. The HC held that vouchers have no inherent value of their own. Vouchers would fall under the definition of 'money', defined under CGST Act. Since, CGST Act excludes 'money' from definition of goods or services, the issuance of vouchers / PPI would be treated as neither goods nor services.

SBGCO Comments:

The above decision of the HC has set aside the confusion and chaos that had ensued in the industry on account of the rulings of the AAR and AAAR. The Hon'ble HC placed reliance on previous decision in the cases of Sodexo SVC India Private Ltd. Vs. State of Maharashtra [2016 (331) ELT 23 (SC)] and come to the correct conclusion. The taxpayers must also be careful in choosing the issues that are decided to be raised before the AAR and the potential impact of any adverse ruling in such case.

2. Wipro Limited vs. Asst. Commissioner of Central Taxes, Bengaluru [2023-TIOL-84-HC-KAR-GST]

Background Facts:

Recently the Department issued Circular No. 183/15/2022-GST dated 27.12.2022 to resolve the ITC mismatches between GSTR 3B and GSTR 2A for FY 2017-18 and FY 2018-19. The Petitioner has inadvertently mentioned incorrect GSTIN of the customer in the invoices issued by them in FY 2017-18, FY 2018-19 and FY 2019-20.



Issue Raised:

Whether the benefit of Circular No. 183/15/2022-GST dated 27.12.2022 be extended to FY 2019-20 when the said circular specifically refers only to FY 2017-18 and FY 2018-19?

Gist of the Decision:

The Hon'ble HC held that error committed by the petitioner of reflecting incorrect GSTIN is a bonafide error occurred due to bonafide reasons and sufficient cause being shown. Hence, by adopting a justice-oriented approach, the Hon'ble HC allowed the benefit of the said Circular for FY 2019-20 as well, subject to fulfilment of conditions mentioned therein.

SBGCO Comments:

The above judgement will bring relief to many taxpayers who could not take benefit of the Circular for genuine errors that had crept in the GST returns for FY 2019-20. The Circular is already a big relief for taxpayers for FY 2017-18 and FY 2018-19 for dealing with mismatches in claim of input tax credit for the said two years and hopefully the benefit will be extended to FY 2019-20 by other states as well and not just Karnataka.

3. SE Forge Ltd vs. Union of India [2023-TIOL-243-HC-AHM-GST]

Issue Raised:

Can SEZ unit claim refund of ITC lying unutilized in the electronic credit ledger?

Gist of the Decision:

The Hon'ble HC relied on the case of IPCA Laboratories vs. Commissioner of Central Tax [2022-TIOL-270-HC-AHM-GST] and held that there is no restriction on the petitioner (SEZ unit) to claim refund of unutilized ITC. The HC also held that when the petitioner's supplier has given an undertaking that they have not claimed refund and the petitioner themselves have agreed to take responsibility to make good the amount if any refund is claimed by their supplier, then the Department should release the refund subject to proper verification.

4. Choksi Exports vs. Union of India [2023-TIOL-196-HC-AHM-GST]

Issue Raised:

Whether entire refund can be withheld if petitioner's supplier has purchased goods from a supplier who is placed in the list of risky suppliers?

Gist of the Decision:

The Hon'ble HC held that none of the provisions of CGST Act and IGST Act require verification of the genuineness of supplier's supplier. Further, in the specific instance, the petitioner has voluntarily reversed ITC to such extent as well. Since, the petitioner had filed shipping bills for all exports and they are not prosecuted under any provisions of the GST law, the department authorities were directed to grant the amount of IGST refund to the petitioners.

SBGCO Comments for 3 & 4:

The above decision highlights that when it comes to issuing refunds, the Department would probably find creative ways to avoid / delay issuing refund and the taxpayers will have to wait



or resort to litigation to claim what is legally due to them. The HC has ensured that in both the above cases, exporters do not suffer on account of farcical issues brought up by the department specially at the time of handling refund related matters.

5. Chitra Automobile vs. State of Jharkhand [(2023) 3 Centax 76 (Jhar.)]

Issue Raised:

Can SCN be issued without mention relevant details / striking out irrelevant particulars? Whether summary SCN has to be issued with the SCN? Whether Order can be issued without granting opportunity of personal hearing?

Gist of the Decision:

The Hon'ble SCN set aside the SCN, summary SCN and the subsequent Order and held that:

- a. SCN is invalid if irrelevant particulars are not struck out as such SCN would be vague
- b. Summary of the SCN has to be issued "along with" the SCN as provided in Rule 142 of the CGST Rules
- c. Order cannot be passed within 5 days of issuance of summary SCN without providing opportunity of hearing.

SBGCO Comments:

The HC has once again come to the aid of the taxpayer when the Department does not follow the due process prescribed under the law. The Government should take serious note of the procedural lapses in issuance of notices by the Officer and start rigorous training for the officers so as to ensure due legal process is followed in all cases. There are numerous instances under GST wherein such lapses in SCN have been regularly identified by the HC, but hardly any action taken by the Government to rectify such issues at the grassroot level.

6. Ramani Sucheti Malushte vs. Union of India [2023-TIOL-81-HC-MUM-GST]

Issue Raised:

Whether receipt date would begin from the day of receipt of unsigned Order or day of receipt of signed Order from the concerned officer?

Gist of the Decision:

The Hon'ble HC held that an unsigned Order will have no effect in the eyes of the law. The date of receipt of Order will be the day on which the petitioner receives a copy of the Order wherein the signature of the Officer was affixed.

SBGCO Comments:

The above decision of the HC reflects the importance of affixing signature on every document issued by the Department. Affixing Digital Signature on a document would give legal sanctity to the document issued. As taxpayers, such technical points should be noted when any document is received from the department to ensure authenticity of the same. Similarly, when a central government tax officer issues any notice / letter, the tax payer must ensure that DIN is also affixed on such documents.



C. Recent Decisions from Advance Authority

1. Aabhushan Jewellers Private Limited [23/WBAAR/2022-23 (West Bengal) = 2023-VIL-31-AAR]

Background facts:

The applicant is a job-worker for manufacturing of gold ornaments. For every 1000grams of pure gold provided by the principal, the applicant is allowed a normal loss of upto 40 grams (i.e., return gold ornaments worth 960 grams). The Applicant further subcontracts the same contract to another job-worker wherein, the normal loss permitted is only 30 grams for every 1000 grams. Hence, the applicant would gain 10 grams of pure gold in addition to the making charges for manufacturing of gold ornaments from his principal.

Questions raised:

- a. Whether the applicant is liable to pay GST in respect of gain of 10 grams of Pure Gold?
- b. In case the assessee is liable to pay GST then what shall be the time and value of Supply?
- c. In case the assessee is liable to pay GST then whether it shall be classified as goods and chargeable to tax @ 3% under HSN: 7108/7113 or whether it shall be classified as service and chargeable to tax @ 5% under HSN: 9988?

Gist of the Ruling:

As per the AAR, retaining a certain amount from the input (10 gram of pure gold for the instant case) before it put into the manufacturing process cannot be treated as 'wastage' or 'normal loss' and hence, price is not the not the sole consideration in such case of job work. Hence, the AAR has held that:

- a. The value of 10 grams of pure gold shall form a part of value of supply of job work services provided by the applicant and therefore the applicant is liable to pay tax on such value.
- b. The value of the supply shall be determined under rule 27 of the CGST/WBGST Rules, 2017 and time of supply would be determined under sub-section (2) of section 13 of the GST Act.
- c. In the instant case, the value of 10 gm of gold shall be a part of value of job work services and accordingly would be taxable @ 5%

SBGCO comments:

It is an interesting case which delves into the aspect of "consideration" which the recipient themselves does not know that they are paying it. Whether such saving in normal loss can be considered as "consideration"? As per the agreed terms, 10 grams of gold is not a payment by principal manufacturer for job work activity. Such retention appears to be without the knowledge and content of the principal manufacturer. The AAR has not really deep dived into the transaction to understand that principal manufacturer has not really "agreed" to give such saving in normal loss as consideration but it is the job worker that has unilaterally decided to keep the same.



2. SATS Food Solutions India Pvt Limited [No. KAR ADRG 11/2023 (Karnataka) = 2023-VIL-36-AAR]

Question raised:

What is the applicable GST rate on supply of frozen food in institutional packs to companies in Aviation Industries, quick service restaurants, Hotels etc., across “Ready To Eat” / “Ready To Cook” / Processed and Semi Processed categories?

Gist of the Ruling:

As per the AAR, such “Ready To Eat” / “Ready To Cook” food products are covered by Sr. No 23 (HSN 2106) of Schedule III of Notification No. 1/2017 - CT (R) dated 28.06.2017 and the applicable GST rate for all such food products is 18%. The AAR relied on the explanatory notes to tariff heading 2106 which reads “*preparations for use, either directly or after processing (such as cooking, dissolving or boiling in water, milk or other liquids), for human consumption*” and as per AAR such entry would cover RTE and RTC food products.

SBGCO comments:

The AAR has correctly understood the facts and applied them to the relevant entry of the rate notification applicable for goods in conjunction with relevant tariff heading applicable to the said food products.



D. GST Compliance chart for March 2023

S N	Due Date	Form	Period	Periodicity	Special Remarks
1.	10.03.2023	GSTR - 7	Feb 2023	Monthly	To be filed by those who are required to deduct TDS under GST
2.	10.03.2023	GSTR - 8	Feb 2023	Monthly	To be filed by those who are required to collect TCS under GST
3.	11.03.2023	GSTR - 1	Feb 2023	Monthly	Taxpayers filing GSTR - 1 monthly
4.	13.03.2023	GSTR - 6	Feb 2023	Monthly	To be filed by an ISD
5.	13.03.2023	IFF	Feb 2023	Monthly	To be filed by those under QRMP Scheme (Optional)
6.	13.03.2023	GSTR - 5	Feb 2023	Monthly	To be filed by a non-resident foreign taxpayer registered in GST
7.	20.03.2023	GSTR - 3B	Feb 2023	Monthly	To be filed by Taxpayer filing monthly GSTR 3B
8.	20.03.2023	GSTR - 5A	Feb 2023	Monthly	To be filed by non-resident Online Information and Database Access or Retrieval (OIDAR) services provider
9.	25.03.2023	PMT - 06	Feb 2023	Monthly	Challan to be filed for payment by those under QRMP Scheme
10.	31.03.2023	CMP-02	FY 2023-24	Annual	Opting of composition scheme for the next financial year
11.	31.03.2023	RFD-11	FY 2023-24	Annual	Renewal of Letter of Undertaking (LUT) for next financial year for exporters



Disclaimer

This newsletter is for general public information and knowledge sharing. In case any clarifications required, you may connect with us at:

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